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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-320

HERTZ COMMERCIAL LEASING CORPORATION,

Petitioner,

vs.

CITY OF CHICAGO, a municipal corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

DON H. REUBEN
LAWRENCE GUNNELS
SHANE H. ANDERSON
REUBEN & PROCTOR
11 South LaSalle Street
Chicago, Illinois 60603
(312) 558-5500

Attorneys for Petitioner

Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

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OPINIONS BELOW

The opinion of the Supreme Court of Illinois is not yet reported but is reproduced as Appendix "A", *infra*; the Supreme Courts' letter reporting denial of a petition for rehearing is reproduced as Appendix "B", *infra*. The opinion of the Appellate Court for the First District of Illinois reversing an Order of the Circuit Court of Cook County entering declaratory judgment for petitioner is reported at 38 Ill.App.3d 835, 349 N.E.2d 902 (1976), and is reproduced as Appendix "C", *infra*. The Order and Opinion of the Trial Court are unreported, but are reproduced as Appendix "D", *infra*.

JURISDICTION

The decision of the Illinois Supreme Court was rendered on April 3, 1978. A petition for rehearing was timely filed, and was denied on May 26, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether a Chicago municipal parking ordinance as construed by the Illinois Supreme Court to permit imposition of strict criminal liability on auto rental companies for alleged parking violations of their lessees violates the Due Process Clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> SECTION 1. * * *
>
> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Municipal Code of Chicago, Illinois, Section 27-364, provides in pertinent part:

> *Presumptions:* (a) Whenever any vehicle shall have been parked in violation of any of the provisions of an ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor.

STATEMENT OF CASE

In 1967, the City of Chicago filed quasi-criminal complaints in the Circuit Court of Cook County naming petitioner Hertz Corporation[1] and two other auto rental companies as defendants. The complaints charged that defendants were registered owners of motor vehicles that had been ticketed for alleged violations of Chicago parking ordinances during the year 1966. The complaint against Petitioner Hertz alleged a total of 5,879 parking violations and sought judgment of fines totalling $88,-185.00. (R. C96) The complaint against defendant Avis Rent A Car System, Inc. alleged 4,895 parking violations and sought judgment for fines totalling $73,-425.00 (R. C70); the complaint against defendant Chrysler Leasing Corporation claimed 2,493 parking violations and sought judgment for fines totalling $37,-395.00. (R. C173).

These complaints, as later amended and consolidated (R. C3), included a prayer for declaratory judgment to construe Section 364, Chapter 27 of the Municipal Code of Chicago. The City sought a construction of Section 364 that would conclusively preclude registered owners of vehicles charged with parking in violation of any Chicago traffic ordinance from asserting as a defense the fact that the ticketed vehicles were not in the possession or control of the owner at the time of the violation. (R. C8) Section 364 of the Municipal Code reads as follows:

> "*Presumptions:* (a) Whenever any vehicle shall have been parked in violation of any of the pro-

[1] The correct name of Petitioner is Hertz Corporation. The name "Hertz Commercial Leasing Corporation" in the caption is a misnomer occurring in drafting the complaint below.

> visions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor."

The trial court rejected the City's position and entered a declaratory judgment construing Section 364 as creating a *prima facie* presumption of liability that may be rebutted by proof that the vehicle was in possession and control of a lessee at the time of the alleged violation.

The Illinois Appellate Court reversed, by vote of two judges to one (Appendix "C", *infra*). After discussing the "division of authority" among State courts regarding the constitutionality of an irrebuttable presumption of owner liability, the majority opinion held that Section 364 as a matter of "substantive law" conclusively imposes "vicarious liability" for parking violations upon registered owners who rent cars to others. (A. 31a)

The Illinois Supreme Court granted leave to appeal, and affirmed the Appellate Court's decision (Appendix "A", *infra*). Citing a portion of this Court's opinion in *Van Oster v. Kansas*, 272 U.S. 465 (1926), the Illinois Supreme Court stated that "[s]ince [1926], the United States Supreme Court has approved vicarious liability for violations which subject the vicarious party to criminal as well as civil liability. . . ." (A. 9a)

On May 26, 1978, the Illinois Supreme Court denied Hertz' petition for rehearing. (A. 18a) Hertz now petitions for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

In construing the Chicago ordinance to permit imposition of "vicarious" criminal liability on rental companies for alleged parking violations of lessees, the Illinois Supreme Court in reality decreed strict liability, and in the process threw petitioner's Fourteenth Amendment due process rights to the winds. We submit the decision clearly warrants review because of its conflict with prior rulings of this Court, the important and recurring nature of the issue, and the fact that several State courts have reached diametrically conflicting conclusions.

I.

THE DECISION BELOW VIOLATES DUE PROCESS BY IMPOSING STRICT LIABILITY WITHOUT REGARD FOR PETITIONER'S INABILITY TO PREVENT OR CONTEST THE ALLEGED VIOLATION.

As this Court observed last term in *United States v. U.S. Gypsum Co.*, ... U.S. ....., 46 U.S.L.W. 4937, 4941 (June 29, 1978), "[S]trict liability offenses" have a "generally disfavored status." The undeniable practical impact of the Illinois Supreme Court's decision is to impose strict criminal liability on rental companies for alleged parking violations of lessees, notwithstanding the fact that the court professed merely to be approving "vicarious" liability.

There is no due process distinction between vicarious and strict liability when, as here, the defendant is in no "position to prevent the violation". *United States v. Park*, 421 U.S. 658, 671 (1975). In *Park* the Court made clear that a vicarious—as opposed to strict—criminal liability statute may be found consistent with due process *if* it

"permits a claim that a defendant was 'powerless' to prevent or correct the violation." *Id.* at 673. The Illinois Supreme Court has squarely held that the Chicago ordinance involved here does not permit such a claim, and no one can rationally assert that a rental car company is in a position or has the power "to prevent or correct" alleged parking violations when it does not have possession or control of vehicles. The decision below is irreconcilable with *Park.* See also *Morissette v. United States,* 342 U.S. 246, 255 (1952).

The decision below also clashes with *Bell v. Burson,* 402 U.S. 535 (1971). The Court there held unconstitutional a Georgia statute that permitted the State to suspend the driver's license of an uninsured motorist involved in an accident without permitting the motorist an opportunity to prove absence of fault, unless the motorist posted security to cover claimed damages. The State argued that fault liability was irrelevant to the constitutionality issue but this Court disagreed, stating: "We look to substance, not to bare form, to determine whether constitutional minimums have been honored." 402 U.S. at 541. The Court ruled that fault could not irrebuttably be presumed from the fact that the uninsured motorist was involved in an accident, and that his driver's license thus could not be suspended without a hearing on fault.

The Court in *Bell* also made clear that the hearing required by the Fourteenth Amendment must be *meaningful;* one of form only is not sufficient. "It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision . . . does not meet this standard." 402 U.S. at 542. *Accord: Vlandis v. Kline,* 412 U.S. 441, 446 (1973) ("[S]tatutes creating permanent irrebut-

table presumptions have long been disfavored under the Due Process Clause"); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974); *Dept. of Agriculture v. Murry*, 413 U.S. 508 (1973); *Stanley v. Illinois*, 405 U.S. 645 (1972).

The Illinois Supreme Court's opinion addresses the due process issue as follows:

> "An irrebuttable presumption may be a constitutional denial of due process if it deprives a party of the opportunity to prove the nonexistence of an essential element of the substantive offense. The defendants' position assumes that an essential element of the ordinance is the presumption that the owner was the person who parked the vehicle. As we have previously stated, the ordinance does not purport to incorporate that presumption into the substantive offense. The two elements of the substantive offense are rebuttable by a *showing that a violation was not committed* or that the defendant was not the owner at the time of the violation. The constitutional requirement of procedural due process is satisfied because the defendant is not precluded from rebutting either element of the substantive offense." (A. 11a; emphasis added.)

The fatal flaw in this analysis is that it is based on a false assumption insofar as auto rental companies are concerned. It assumes that a rental company can in fact prove that an alleged parking violation "was not committed" by a leased car driver if such be the case. But exactly the opposite is true in actual operation and fact; the rental company plainly has no way to compel the attendance in court of the driver-lessee—the *only* person whose testimony can disprove the alleged violation. In the vast bulk of cases, the driver who parked the vehicle will have long since paid his rental fee and departed,

most frequently to a distant place.[2] Time, cost and distance all combine to preclude a rental company from disproving alleged parking violations of lessees, and we submit no one could seriously claim otherwise.

Here, as in *Bell v. Burson*, substance, and not "bare form," is the test for determining "whether constitutional minimums have been honored." 402 U.S. at 541. They are not honored under the Illinois Supreme Court's decision. Although a "hearing" may be available to petitioner for the purpose of showing the absence of fault, *i.e.*, "that a [parking] violation was not committed," such availability is entirely theoretical and meaningless. The "hearing" would effectively exclude consideration of the fault element because it would be impossible as a practical matter for petitioner to prove "that a violation was not committed" by the driver-lessee. Moreover, the due process violation is compounded by the equally clear and undeniable fact that petitioner is in "no position to prevent the violation." *United States v. Park, supra*, 421 U.S. at 671 (1975). We respectfully submit that review by this Court is clearly warranted.

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[2] The Illinois Supreme Court also attempted to defend its construction of the Chicago ordinance on the ground that it does not treat auto rental companies any differently from "owners who gratuitously lend their vehicles to friends or family members." (A. 2a) Again this analysis may be true in theory, but is false in fact. In reality, there is a striking difference between imposing vicarious liability on rental companies and imposing it on owners who gratuitously lend their vehicles to friends or family members. The latter owners will almost always be notified of the parking ticket by the friend or family member within a very short time period, because of the close personal relationship that is involved; presence of the driver at trial and cooperation in the defense are easily secured if desired. Precisely the opposite is true of auto rental companies and their lessees; the relationship is strictly impersonal and fleeting. Lessees have no natural incentive to notify the lessor or cooperate in the defense, and this is particularly so when the rental company will be held automatically liable for the penalty in any event.

II.

THE CHICAGO ORDINANCE AS CONSTRUED BELOW OFFENDS DUE PROCESS BECAUSE IT IS NOT RATIONALLY RELATED TO ITS JUSTIFYING PURPOSE.

The Illinois Supreme Court attempted to justify imposition of "vicarious" criminal liability on rental companies for alleged parking violations of lessees on the "public danger" rationale of *United States v. Dotterweich*, 320 U.S. 277 (1943). Thus, the Illinois Court reasoned that "vicarious" liability does not run afoul of the Due Process Clause if the "person who is unaware of the wrongdoing" stands (in the words of *Dotterweich*) "in responsible relation to a public danger." (320 U.S. at 281) (A. 10a) The "public danger," *i.e.*, commission of parking violations, will assertedly be alleviated by holding owners of vehicles "vicariously" liable for violations of their bailees because such liability "would in all likelihood be a strong deterrent [of parking violations]." *Id.*

Contrary to the Illinois Supreme Court's reasoning, we believe it self-evident that the Chicago ordinance as now construed will inevitably and greatly encourage, rather than deter, parking law violations by vehicle lessees. Whatever validity the "deterrence" theory may have as applied to those borrowing autos gratuitously from friends or family members, it clearly does not extend to persons who lease vehicles from commercial rental companies on a purely impersonal, fleeting and often one-time basis. (See note 2, *supra*.) It flouts reason and common sense to suggest that rental companies have any practical methods at their disposal to deter or prevent parking violations, especially when they will automatically be held liable to pay the fines in any event for all tickets that are unheeded or discarded by lessees.

The manifest and inevitable result of the ordinance as construed below will be to encourage and multiply parking violations by lessees; the Illinois Court's construction is in effect a license for lessees to violate parking laws with impunity.

Thus, and in sum, no rational relationship has been or can be demonstrated between the Illinois Supreme Court's interpretation of the Chicago ordinance and its asserted objective of eliminating a "public danger." The "public danger" will only be expanded and aggravated. Clearly, such a result cannot be reconciled with *Dotterweich* or due process, and compellingly merits review here. See also *e.g.*, *Williamson v. Lee Optical Co.*, 348 U.S. 483, 491 (1955); *Nebbia v. New York*, 291 U.S. 502, 525 (1934).

III.

REVIEW IS WARRANTED IN LIGHT OF A CONFLICT AMONG STATES ON THE ISSUE PRESENTED.

The opinion below cites and follows Ohio, Missouri and Iowa State court decisions sustaining municipal parking ordinances that were construed to permit "vicarious" liability in the same fashion as the Illinois Court's decision. (A. 8a)

Courts of four other States have gone the opposite way. Thus, in *People v. Forbath*, 42 P.2d 108, 110 (Cal. 1935), the Court held:

> "We do not believe that the Constitution of our Nation has yet been swept away to the extent of permitting criminal guilt to be so speciously created and we come to the conclusion that unless defendant had knowledge that his automobile was being parked during the time that it was parked, and unless such parking was at least passively acquiesced in by him, he would not be guilty of violating the ordinance here concerned."

So also, in *City of Seattle v. Stone*, 67 Wash. 2d 886, 410 P. 2d 583, 585 (1966), the Court declared:

> "The [section of the ordinance] is patently incompatible with the concept of due process. It purports to make a defendant responsible even though he in fact might not have been responsible for the parking violation.
>
> "For the reasons indicated, we are forced to strike down as unconstitutional that portion [of the ordinance] for it deprives an automobile owner of due process of law."

To the same effect are *Red Top Driv-Ur-Self v. Potts*, 227 Ark. 627, 300 S.W.2d 261 (1957) and *City of Portland v. Kirk*, 16 Ore.App. 331, 518 P.2d 665 (1974).

The issue presented here is thus a recurring and troublesome one that will remain unresolved and doubt-plagued until this Court speaks.

CONCLUSION

For the foregoing reasons, we submit that the petition for a writ of certiorari should be granted.

Respectfully submitted,

DON H. REUBEN
LAWRENCE GUNNELS
SHANE H. ANDERSON
REUBEN & PROCTOR
11 South LaSalle Street
Chicago, Illinois 60603
(312) 558-5500

Attorneys for Petitioner

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APPENDIX

APPENDIX A

SUPREME COURT OF ILLINOIS

Docket No. 48699—Agenda 7—January 1978.
THE CITY OF CHICAGO, Appellee, v. HERTZ COMMERCIAL LEASING CORP. *et al.*, Appellants.

MR. JUSTICE MORAN delivered the opinion of the court:

This case involves the interpretation of a parking ordinance of the city of Chicago (City) with respect to an owner's responsibility for vehicles illegally parked by a person other than the owner. In August of 1967, the City brought three actions, consolidated in the trial court, against Hertz Commercial Leasing Corporation, Avis Rent-A-Car System, Inc., and Chrysler Leasing Corporation (defendants). In count I of its amended complaint, the City sought to recover payment of fines from the defendants as the registered owners of vehicles allegedly parked in violation of municipal ordinances during 1966. The City prayed for judgments of $88,185 against Hertz, charging 5,879 violations; $73,425 against Avis, charging 4,895 violations; and $37,395 against Chrysler, charging 2,493 violations. Count II requested a declaratory judgment, conceding that the violating vehicles were probably in the possession of lessees of the defendants at the time of the violations. The City, nevertheless, sought to have the applicable parking ordinance interpreted to preclude the defendants from raising the defense that the owner was not in possession of the vehicle at the time of the violation.

The trial court dismissed count I, finding that it did not sufficiently inform the defendants of the details of the alleged violations. The appellate court reversed and

remanded count I for trial. (38 Ill. App. 3d 835.) This aspect of the decision is not before us.

On count II, the trial court entered a declaratory judgment finding that the applicable parking ordinance creates a presumption that the registered owner was in possession of the vehicle at the time of the parking violation, that the presumption may be rebutted by a showing that the vehicle was not in fact in the possession of the registered owner, and, ultimately, that the defendants were not responsible for violations while the vehicles were in the possession of their lessees. A majority decision of the appellate court reversed, holding that the parking ordinance imposes vicarious liability on the registered owner and that an owner is not absolved of responsibility if, at the time of the parking violation, he had "voluntarily transfer[red] possession [of the vehicle] for hire." (38 Ill. App. 3d 835, 844.) We granted the defendants' petition for leave to appeal.

The adopted municipal ordinance in question provides:

> "Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be *prima facie responsible* for such violation and subject to the penalty therefor." (Emphasis added.) Chicago Municipal Code, ch. 27, sec. 364(a).

We emphasize at the outset that the ordinance cannot be read to treat owners who lease vehicles for hire any differently from owners who gratuitously lend their vehicles to friends or family members. The issue, though framed differently by the parties in response to the appellate court's opinion, is whether the ordinance purports to impose liability on the owner as the presumptive driver of the vehicle at the time of the parking violation, or whether it purports to impose vicarious

liability on the owner, regardless of who actually parked the vehicle. If the former, then an owner—any owner, not merely an owner who leases vehicles for hire—may absolve himself of liability by showing that he was not the person who parked the vehicle alleged to have been in violation of a parking ordinance.

Parking ordinances similar to, and almost identical to, the above cited ordinance have been examined by courts throughout the country over the past 50 years. The controversy almost invariably emerges as a concerted attempt by the courts to discern the intention of the local authority in regulating parking. Some local authorities seek to impose liability ultimately on the driver and do so by summoning the registered owner to court, at which time the owner is presumed to have parked the vehicle. The owner may successfully rebut this presumption, in which case the local authorities are thrust into the dilemma of either securing personal jurisdiction over the driver, or dismissing the case.[1] Other local authorities seek to impose liability directly on the registered owner, in which case the owner is held

[1] In 1968, the city of New York passed an ordinance which provided that an owner who rents or leases vehicles shall be jointly and severally liable with the customer or lessee for parking violations. A report which accompanied the ordinance stated: "This proposed local law, as amended, would make auto lessors jointly and severally liable with the lessees of the vehicle for violation abuses whereby scofflaws may avoid the payment of traffic fines. At present, New York City is losing millions of dollars annually in unpaid parking tickets issued against rented vehicles. Invariably, auto lessors plead in Traffic Court that the customer and not the auto rental firm, is responsible for the traffic tickets. The court traditionally will either lay over such cases, adding to the ever-increasing backlog, or else drop the matter as a general practice due to the difficulties in securing personal jurisdiction over the actual violator." *Kinney Car Corp. v. City of New York* (1968), 58 Misc. 2d 365, 295 N.Y.S.2d 288, 290, *aff'd* (1971), 28 N.Y.2d 741, 321 N.Y.S.2d 121, 269 N.E.2d 829.

vicariously responsible for the violation. In either case, the person subject to the penalty is strictly liable, in the legal sense that the owner or driver need not have intended to commit the offense to be responsible for the violation.

The defendants vigorously argue that the plain meaning of the words "*prima facie* responsible" in the Chicago ordinance indicates that it was the municipality's clear intention to allow the registered owner to rebut the presumption that the vehicle was parked by the owner. The issue cannot be so facilely resolved. The words "*prima facie*" mean nothing more than "at first sight" or "so far as can be judged from the first disclosure" or "presumably" or "without more." (Black's Law Dictionary 1353 (4th ed. 1957); *Iowa City v. Nolan* (Iowa 1976), 239 N.W.2d 102, 105.) In its statutory context, the words "*prima facie*" mean that the City has established its case against the registered owner by proving (1) the existence of an illegally parked vehicle, and (2) registration of that vehicle in the name of the defendant. Such proof constitutes a *prima facie* case against the defendant owner. There is no indication in the ordinance that the owner, to be presumed responsible for the violation, must be presumed to have been the person who parked the vehicle. In practice, the defendant, to absolve himself of responsibility, may show that the vehicle was not parked illegally or that he was not the registered owner of the vehicle at the time of the alleged violation. The defenses are limited, but the plain meaning of the ordinance admits of no more.

A predecessor of the ordinance in question provided: "Whenever any vehicle shall have been parked in violation of any of the provisions of this chapter prohibiting or restricting parking, the person in whose name such vehicle is registered shall be sub-

> ject to the penalty for such violation." (Chicago Municipal Code, ch. 27, sec. 34.1.)

This unambiguous language imposes both strict and vicarious liability on the owner whenever his vehicle is illegally parked, irrespective of whether the owner was the person who parked the vehicle.

The defendants assert that, because the present ordinance added the words "*prima facie* responsible for such violation," the City deliberately chose to incorporate into the ordinance the presumption that proof of ownership is *prima facie* evidence that the vehicle was parked by the owner. We interpret the development of the ordinance differently.

In *City of Chicago v. Crane* (1943), 319 Ill. App. 623, the appellate court was called upon to construe the predecessor ordinance to determine whether an owner could be subject to the penalty for a parking violation which he did not commit or authorize. The trial court had found that an ordinance which "purports to make the owner of a car liable whenever the car is illegally parked * * * is completely without basis in law." (319 Ill. App. 623, 627.) The appellate court reversed, holding that the City established a *prima facie* case against the owner by proving that the defendant owned the car that was parked within 15 feet of a fire hydrant. The defendant had offered no evidence to rebut the *prima facie* case. In its opinion, the court cited cases from other jurisdictions which involved ordinances, all of which attached liability to the owner, but which differed in that they found the owner either liable as the owner or as the presumptive driver at the time of the violation. Because, in *Crane*, the owner did not introduce any evidence to rebut the *prima facie* case, the court was not called upon to determine if that Chicago ordinance imposed liability

on the owner as owner or as the presumptive driver. It did, however, emphasize that the City had "made out a *prima facie* case." (*City of Chicago v. Crane* (1943), 319 Ill. App. 623, 631.) We can assume only that the City amended its ordinance to indicate, as intimated in the *Crane* decision, that proof of a violation and of registered ownership establishes the City's *prima facie* case against a defendant and that the defendant may rebut either element of the *prima facie* case. See K. Levin, *Ownership as Evidence of Responsibility for Parking Violation*, 41 J. Crim. L. & Criminology 61, 62 (1950).

Our own research reveals four cases from other jurisdictions which interpret the words "*prima facie* responsible" in precisely the context presented in this case. In *City of Columbus v. Webster* (1960), 170 Ohio St. 327, 328, 164 N.E.2d 734, 735, the applicable ordinance read, in pertinent part:

> "'If any vehicle is found * * * in violation of any * * * ordinance of this city, regulating the stopping or standing or parking of vehicles, and the identity of the driver cannot be determined, the owner, or person in whose name such vehicle is registered shall be held *prima facie responsible for such violation.*'" (Emphasis added.)

Ohio's supreme court, in holding the owner vicariously liable for the parking violation, expressly rejected the interpretation that the ordinance made "proof of illegal parking and registered ownership *prima facie* evidence that the vehicle was parked by the owner." It stated that the ordinance "merely places *prima facie* responsibility for the illegal parking of a motor vehicle on the public streets upon the owner of such vehicle. It thus places the responsibility upon the person who is in the best position to know the identity of the operator." *City of Columbus v. Webster* (1960), 170 Ohio St. 327, 331, 164 N.E.2d 734, 737.

The Supreme Court of Missouri reached the same conclusion in interpreting a Kansas City ordinance which provided that "the owner or person in whose name such vehicle is registered in the records of any city, county or state shall be held *prima facie responsible for such violation*, if the driver thereof is not present." (Emphasis added.) (499 S.W.2d 449, 451.) The court concluded that "[t]he words '*prima facie*', as used in this ordinance, do not mean that the owner is presumed to be the driver," and held that the ordinance "places responsibility upon the *owner* without any requirement that he be found to have been the *driver*, whether that finding is premised on a presumption or direct evidence." (Emphasis in original.) (499 S.W.2d 449, 452.) The court further noted that an ordinance "imposing liability for the parking violation fine on the owner as well as the driver may well result in fewer violations and thereby assist in the reduction of traffic problems." (*City of Kansas City v. Hertz Corp.* (Mo. 1973), 499 S.W.2d 449, 452-53.) We note that the case provided an identical factual context to this case, in that a rental company had leased its car to a person whose identity was known by the court and who assumedly committed the violation.

In *Iowa City v. Nolan* (Iowa 1976), 239 N.W.2d 102, 103, the applicable ordinance provided similarly:

> "If any vehicle is found stopped, standing or parking in any manner violative of the provisions of [applicable ordinances] and the identity of the operator cannot be determined, the owner or person or corporation in whose name said vehicle is registered shall be held *prima facie responsible for said violation.*" (Emphasis in original.)

Iowa's supreme court, citing the *Kansas City* case, held that, under the ordinance, a registered owner may be held vicariously liable for his illegally parked vehicle.

In a distinguishable case, an intermediate appellate court did reach a different conclusion. In *City of Portland v. Kirk* (1974), 16 Ore. App. 329, 331 n.1, 518 P.2d 665, 666 n.1, the ordinance provided that "[t]he registered owner of the vehicle is *prima facie responsible for the violation* charged by the parking citation." (Emphasis added.) The court concluded that the ordinance established a permissive inference that the owner of the vehicle was the party who parked the vehicle. We note, however, that the Portland ordinance permitted imprisonment for up to six months for parking offenses. Although the court did not imply that it reached its conclusion in light of the possibility that an owner could be subject not only to fine but to imprisonment, it is recognized that vicarious liability should not be extended as readily to crimes which may subject a defendant to imprisonment. W. LaFave & A. Scott, Criminal Law sec. 32, at 223 (1972); F. Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689, 723 (1930).

We are in accord with the results reached by the supreme courts of Ohio, Missouri and Iowa. We believe that the City intended, under both the previous and the present ordinances, to subject the owner of an illegally parked vehicle to the penalty for such parking violation. The incorporation of the words "*prima facie* responsible" merely clarified that the defendant is not conclusively subject to penalty once the City establishes its *prima facie* case of a violation and ownership, but that he can come forward with evidence contraverting either element of the case against him. Accordingly, we hold that the Chicago parking ordinance imposes vicarious liability on the registered owner and that proof that the vehicle was in the possession of another at the time of the violation is irrelevant to the substantive offense.

A question then arises as to whether the imposition of vicarious liability on an owner who rents a vehicle for hire, thereby voluntarily relinquishing the possession and control of the vehicle for the term of the lease agreement, is a constitutional denial of due process. The United States Supreme Court had occasion to consider the extent to which liability could be imposed on a vicarious party without depriving the party of its constitutional right to due process in *Van Oster v. Kansas* (1926), 272 U.S. 465, 71 L. Ed. 354, 47 S. Ct. 133. There a Kansas statute declared that a vehicle used in the illegal transportation of liquor was a common nuisance and subject to forfeiture. An owner voluntarily entrusted his vehicle to another who unlawfully used the vehicle without the owner's knowledge. In affirming the constitutionality of the statutory forfeiture procedure, the court stated:

> "It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it. * * * So here the legislature, to effect a purpose clearly within its power, has adopted a device consonant with recognized principles and therefore within the limits of due process." (*Van Oster v. Kansas* (1926), 272 U.S. 465, 467-68, 71 L. Ed. 354, 358, 47 S. Ct. 133, 134.)

Since that time, the United States Supreme Court has approved vicarious liability for violations which subject the vicarious party to criminal as well as civil liability. (*United States v. Dotterweich* (1943), 320 U.S. 277, 88 L. Ed. 48, 64 S. Ct. 134; *United States v. Park* (1975), 421 U.S. 658, 44 L. Ed. 2d 489, 95 S. Ct. 1903.) Vicarious criminal liability has been found within the limits of due process to the extent that the person who is unaware of the wrongdoing stands "in responsible relation to a

public danger." (*United States v. Dotterweich* (1943), 320 U.S. 277, 281, 88 L. Ed. 48, 51, 64 S. Ct. 134, 136.) The responsible relation of an owner of a vehicle to its operation and use is a natural one. The public has a right to expect that a vehicle owner who voluntarily surrenders control of his vehicle to another is in the best position both to know the identity and competence of the person to whom he entrusts the vehicle and to deter the commission of parking violations. As one court has stated, "The knowledge of the ordinary user of another's car that the owner who permitted its use would have to respond to a summons and submit to a trial * * * would in all likelihood be a strong deterrent * * *." *Kinney Car Corp. v. City of New York* (1968), 58 Misc. 2d 365, 295 N.Y.S.2d 288, 292, *aff'd* (1971), 28 N.Y.2d 741, 269 N.E.2d 829, 321 N.Y.S.2d 121.

As to owners who rent vehicles for hire, contractual provisions—such as an express acknowledgment of personal liability to pay the lessor on demand for all parking fines and court costs or the requirement of security deposits—would also serve to deter the irresponsible commission of parking violations. Therefore, the imposition of vicarious liability on an owner who voluntarily relinquishes control of his vehicle to another is constitutionally permissible. Accord, *Commonwealth v. Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N.E.2d 411.

We do not have occasion, under the facts of the instant case, to decide whether a vehicle owner can be held vicariously liable for a violation committed by a person, such as a thief, to whom the owner may have no "responsible relation" and no means of deterring such violation.

In an attempt to respond to the appellate court's opinion, the defendants rely on three distinct constitutional

arguments based upon (1) the creation of an irrebuttable presumption, (2) the denial of equal protection, and (3) the retroactive creation of a penal offense.

An irrebuttable presumption may be a constitutional denial of due process if it deprives a party of the opportunity to prove the nonexistence of an essential element of the substantive offense. The defendants' position assumes that an essential element of the ordinance is the presumption that the owner was the person who parked the vehicle. As we have previously stated, the ordinance does not purport to incorporate that presumption into the substantive offense. The two elements of the substantive offense are rebuttable by a showing that a violation was not committed or that the defendant was not the owner at the time of the violation. The constitutional requirement of procedural due process is satisfied because the defendant is not precluded from rebutting either element of the substantive offense.

The defendants' contention that the ordinance denies them equal protection under the law must also fall. As we emphasized at the outset, we do not interpret the ordinance to impose vicarious liability only upon owners who rent their vehicles for hire. Because the ordinance does not create a classification which distinguishes rental owners from ordinary vehicle owners, no equal protection issue is involved.

Similarly, we find no merit to the defendants' argument that by construing the ordinance to impose vicarious liability on vehicle owners we have retroactively created an offense which could not have been reasonably ascertained from a reading of the ordinance. The fundamental principle is that a criminal law must not be given retroactive effect if judicial construction of the law is " 'unexpected and indefensible by reference to

the law which had been expressed prior to the conduct in issue.'" (*Bouie v. Columbia* (1964), 378 U.S. 347, 354, 12 L. Ed. 2d 894, 900, 84 S. Ct. 1697, 1703.) On its face, the ordinance imposes liability on an owner whenever his vehicle is illegally parked. Our construction of the ordinance is entirely consistent with the result reached in *City of Chicago v. Crane* (1943), 319 Ill. App. 623, as well as with recognized principles of vicarious liability for parking offenses in many other jurisdictions. Supreme courts in three neighboring jurisdictions have specifically interpreted the words "*prima facie* responsible" to have the meaning which we ascribe to them. Moreover, one of the defendants here was the party held vicariously liable in one case interpreting an ordinance which involved similar language. (*City of Kansas City v. Hertz Corp.* (Mo. 1973), 499 S.W.2d 449.) We, therefore, conclude that the defendants could have reasonably anticipated a construction of the ordinance which imposes vicarious liability on the owner of an illegally parked vehicle irrespective of whether the owner actually parked the vehicle.

The defendants also contend that construing the ordinance to impose vicarious liability on the owner places it in direct conflict with sections 11-1305(a), 16-201, and 16-202 of the Illinois Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, pars. 11-1305(a), 16-201, 16-202), which, in 1966, were part of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1965, ch. 95½, pars. 188a, 236, 237). Section 11-1305(a) applies specifically to vehicle owners who lease their vehicles to others, and declares that such owners, "after receiving written notice of a violation of this Article or a parking regulation of a local authority involving such vehicle, shall uon request provide such police officers as have authority of the offense, and the court having jurisdiction thereof, with a

written statement of the name and address of the lessee at the time of such offense and the identifying number upon the registration plates of such vehicle." (Ill. Rev. Stat. 1975, ch. 95½, par. 11-1305(a).) Sections 16-201 and 16-202 state, in essence, that a person who commits a violation of the Code or an owner or other person who directs or knowingly permits a vehicle to be operated on a highway in a manner contrary to law is guilty of an offense under the Code. (Ill. Rev. Stat. 1975, ch. 95½, pars. 16-201, 16-202.) The defendants argue that the ordinance is inconsistent with section 11-1305(a) in that the statutory provision contemplates that lessor-owners be absolved of liability for parking violations by providing the names and addresses of the lessees who possessed the vehicles at the tme of the offenses. They argue that the ordinance is also inconsistent with sections 16-201 and 16-202, in that those statutory provisions, by exclusion, contemplate that vehicle owners cannot be found guilty of vehicle-related offenses merely because they own the vehicle at the time of an offense.

Section 11-1305(a) is wholly consistent with a municipal ordinance which imposes vicarious liability on any owner of a vehicle. The section is absolutely silent regarding allocation of liability. It dictates only that, *upon request*, a vehicle lessor shall provide the name and address of the lessee. We find no basis for defendants' assertion that the section contemplates that lessor-owners be absolved of liability for traffic violations by providing the name and address of the lessee who possessed the vehicle at the time of the offense. On the contrary, the section does not purport to limit liability to the lessee, but, rather, to facilitate the imposition of liability on either the lessor or the lessee. A municipality which permits liability to be imposed only upon the per-

son who parked the vehicle might request the information in an effort to pursue the lessee. Another municipality, which provides for the imposition of liability directly on the owner as well as on the person who parked the vehicle, might invoke this section in an effort to attach liability on either the lessor or the lessee. The intention of section 11-1305(a) is to leave the decision of the allocation of liability to those law-enforcement officials who have authority over the prosecution of the specific offenses. The section is not in conflict with the ordinance in question and certainly does not repeal it by implication.

Sections 16-201 and 16-202 define those persons who might be criminally liable for offenses committed under the Illinois Vehicle Code. The sections do not expressly exclude vicarious liability as a basis for holding a person responsible for vehicle-related offenses. The defendants contend, however, that the sections clearly evince a legislative policy which precludes the imposition of vicarious penal liability. Assuming *arguendo* that such a legislative policy exists, we must still confront the narrower question of whether the imposition of vicarious liability for municipal parking violations is inconsistent with a legislative policy which pertains to penal offenses. To answer that, we must examine the statutory scheme embraced by the Illinois Vehicle Code.

Section 11-207 of the Code (Ill. Rev. Stat. 1975, ch. 95½, par. 11-207), like its predecessor (Ill. Rev. Stat. 1965, ch. 95½, par. 122), provides for the uniform enforcement of traffic laws throughout the State and in all municipalities therein. It also provides that no local authority shall enact or enforce any ordinance in conflict with the provisions of the Code unless expressly authorized in the Code, but that local authorities may adopt additional traffic regulations which are not in

conflict with the Code. (Ill. Rev. Stat. 1975, ch. 95½, par. 11-207.) Section 11-208 of the Code (formerly section 26 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1965, ch. 95½, par. 123)) authorizes local authorities to enact and enforce ordinances regulating, among other things, the parking of vehicles. It reads, in pertinent part:

> "(a) The provisions of this Chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:
>
> (1) Regulating the standing or parking of vehicles * * *." Ill. Rev. Stat. 1975, ch. 95½, par. 11-208(a).

Section 11-207 and its predecessor have been interpreted on numerous occasions by this court and by the appellate courts. The section has been consistently construed to allow local authorities to adopt traffic ordinances to the extent that they are not inconsistent with State law. The section does not attempt to preempt the field to the exclusion of local authorities. (*Ayres v. City of Chicago* (1909), 239 Ill. 237; *City of Rockford v. Floyd* (1968), 104 Ill. App. 2d 161, 169-70.) Section 11-208 underscores the State's policy of allowing local authorities to adopt traffic ordinances by specifying areas in which local autonomy will be preserved. It is no coincidence that the Illinois Vehicle Code does not purport to extensively regulate parking. The purpose of this statutory scheme is apparent. Although the Code expresses the general preference for uniform traffic regulations throughout the State, it also contemplates limited areas, such as the regulation of parking, for which statewide uniformity is wisely sacrificed in deference to the problems endemic to the individual municipalities.

This statutory scheme of separating municipal traffic violations from statutory traffic violations is reinforced by statutes indicating that the punishment of municipal traffic offenders is limited to fines (Ill. Rev. Stat. 1975, ch. 24, pars. 1-2-1, 1-2-1.1) and by regarding such violations as "quasi-criminal," endowed with many of the aspects of noncriminal cases, *e.g.*, proof by a preponderance of evidence rather than proof beyond a reasonable doubt. (*City of Chicago v. Joyce* (1967), 38 Ill. 2d 368, 372-73; *Village of Maywood v. Houston* (1956), 10 Ill. 2d 117, 119.) In this regard, we have held that, in the absence of clear statutory language expressing an intention that State laws subsume those areas of local regulation, we will not construe local ordinances to be in conflict with State law. (*City of Chicago v. Joyce* (1967), 38 Ill. 2d 368, 373.) Moreover, recognized rules of statutory construction presume the harmonious operation and effect of two laws, so that specific ordinances are presumed to be consistent with and independent of general State laws. (1A Sutherland, Statutes and Statutory Construction secs. 23.10, 23.18, 30.05 (4th ed. 1972).) We do not read sections 16-201 and 16-202 to impliedly establish a policy that an owner cannot be vicariously liable for municipal parking violations. The sections apply only to criminal violations of the Illinois Vehicle Code. As we noted earlier, it is understandable that a legislative policy would preclude the imposition of vicarious penal liability under the Vehicle Code because statutory traffic violations, unlike municipal traffic violations, are criminal in nature and may subject a defendant to severe punishment, including imprisonment. In light of this bifurcated statutory scheme, we feel that it would be improper to apply a legislative policy against vicarious penal liability to the municipal

regulation of parking, a province for which the Vehicle Code contemplates local autonomy. Accord, *Kinney Car Corp. v. City of New York* (1968), 58 Misc. 2d 365, 295 N.Y.S.2d 288, 292-93, *aff'd* (1971), 28 N.Y.2d 741, 321 N.Y.S.2d 121, 269 N.E.2d 829.

We agree with the results reached by the appellate court, but do so for the reasons stated above. We, therefore, affirm the judgment of the appellate court and remand to the trial court for proceedings consistent with this opinion.

AFFIRMED AND REMANDED.

APPENDIX B

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

May 26, 1978

Kirkland & Ellis
Attorneys at Law
200 E. Randolph Drive
Chicago, Ill. 60601

No. 48699 — City of Chicago, a Municipal Corporation, appellee, vs. Hertz Commercial Leasing Corporation, et al., appellants. Appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for rehearing in the above entitled cause. Mr. Justice Kluczynski took no part.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

APPENDIX C

57891

CITY OF CHICAGO,
Plaintiff-Appellant,

vs.

HERTZ COMMERCIAL LEASING CORP., et al.,
Defendants-Appellees.

Appeal from the Circuit Court of Cook County.

Honorable
NATHAN KAPLAN,
Presiding.

OPINION OF APPELLATE COURT.

MR. PRESIDING JUSTICE GOLDBERG delivered the opinion of the Court:

This appeal by the City of Chicago brings before us three suits, consolidated in the trial court, against Hertz Commercial Leasing Corporation, Avis Rent-A-Car Systems, Inc., and Chrysler Leasing Corporation (defendants). The City sought to recover payment of fines for alleged parking ordinance violations by cars owned by defendants. Defendants Hertz and Avis are in the business of renting motor vehicles to the general public. Defendant Chrysler owns vehicles which were leased to defendant Avis and used by Avis as part of its rental fleet. The order appealed from, entered without hearing evidence, dismissed Count I of the City's amended complaint and entered declaratory judgment on Count II that defendants were not responsible for parking violations by vehicles registered in their names but in possession of their lessees. A summary of the trial record is essential.

In August 1967, complaints were filed by the City of Chicago in the traffic division of the circuit court against all three defendants, alleging that cars registered in their names had been parked in violation of City ordinances during 1966. The City prayed judgment for fines of $88,185 against Hertz, alleging 5879 violations; $73,425 against Avis, alleging 4895 violations; and $37,395 against Chrysler, alleging 2493 violations.

In March of 1968, each defendant filed a demand for a bill of particulars, asking that it be provided with the exact time and location of each alleged parking violation. The demand also requested information regarding the date of follow-up notices allegedly sent by the clerk of the circuit court; the name and address of each person to whom the notices were sent; and also the court date, courtroom specified and the contents of each of said notices. Each defendant also filed a motion for a change of venue from the traffic division to the municipal division of the circuit court.

In March 1969, plaintiff filed a motion in response to defendants' demands for bills of particulars. This motion offered to provide defendants with the original hang-on tickets, so that they could ascertain when and where each violation occurred, but stated that plaintiff had no knowledge regarding the follow-up notices which were prepared and mailed by the clerk of the circuit court.

The motions for change of venue were granted and all three cases were transferred to the municipal division of the circuit court. The three actions were consolidated and an amended complaint was filed on November 15, 1971. The first count of the complaint contained the same allegations and prayer for relief as the original complaints. A computer print-out was attached to and incorporated into the amended complaint, listing the license number and City of Chicago sticker number of each

car involved, the ordinance allegedly violated and the alleged date of each violation. The second count of the amended complaint sought a declaratory judgment regarding interpretation of the City ordinance as did the original complaint.

Defendants moved to dismiss Count I of the amended complaint on the ground that it did not sufficiently inform them of the specific charges so that they could prepare a defense, since it failed to allege the time of each parking violation. Defendants alleged that no response or objection had been made to their demand of a bill of particulars. Rather, they alleged, the City took the position that there was no need to reply to the demand because the complaint had established defendants' absolute liability. Finally, defendants alleged that the delay by the City in providing them with the necessary information had so prejudiced them, that such information, if currently available, would no longer enable them to prepare their defense.

Defendants answered Count II of the amended complaint. As will hereinafter be completely stated, defendants urged that the court construe the pertinent ordinance in a manner different from that set forth by the City.

The City also filed an "opposition" to defendants' motion to dismiss. This pleading alleged that the computer print-out incorporated into Count I of the amended complaint sufficiently apprised defendants of the offenses charged so that they might prepare a defense; and also that no reply was required to the demand for a bill of particulars because the complaint adequately alleged a prima facie case against defendants, so defendants had the burden of going forward and showing why they should not be held liable. Finally, the motion alleged that the City's delay did not prejudice the defendants in any manner.

On April 4, 1972, the trial court entered a draft order striking Count I of the amended complaint because it failed to state

the time and location of the offenses so as to enable defendants to prepare a defense. Because plaintiff adhered to the position that a prima facie case was established by the pleadings, Count I was dismissed.

The court also entered a declaratory judgment on Count II construing the pertinent ordinance in accordance with the theory advanced by defendants. The issues raised by the two counts of the amended complaint will next be considered in order.

The plaintiff first contends that the trial court improperly dismissed Count I of the amended complaint for failure to provide defendants with a bill of particulars, because the information supplied to defendants was sufficient to enable them to prepare a defense. In response, defendants cite Section 37(2) of the Civil Practice Act which provides that a court has discretion to strike the pleading if a party "unreasonably neglects to furnish a bill of particulars, or if the bill of particulars delivered is insufficient, * * *." (Ill. Rev. Stat. 1975, ch. 110, par. 37(2).) The opposite party is entitled to a bill of particulars where allegations of a pleading are deficient in details. *Hemingway* v. *Skinner Engineering Co.* (1969), 117 Ill. App. 2d 452, 458, 254 N. E. 2d 133.

In March 1968, each defendant filed a demand for a bill of particulars, asking the time and location of each alleged violation, as well as information regarding follow-up notices allegedly sent by the clerk of the circuit court. Plaintiff responded to the demand, stating that it had no knowledge regarding the follow-up notices. Plaintiff also offered to provide defendants with each of the original hang-on tickets so that defendants could determine exactly when and where each violation occurred. The record does not reveal any response to this offer by defendants.

On November 15, 1971, an amended complaint was filed for the three consolidated cases. Defendants did not renew their

demand for a bill of particulars, but moved to dismiss Count I of the amended complaint because it failed to allege the time of each parking violation. The motion also alleged that plaintiff had never provided defendants with the requested bill of particulars. In dismissing Count I of the amended complaint, the trial court noted that defendants' requests for information regarding the time and location of each violation were proper, but that the City maintained that the computer print-outs alone provided adequate information to establish a prima facie case.

The trial court neglected to note that the defendants failed to renew their demands for a bill of particulars in response to the amended complaint. It is established law that, "Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn." (*Bowman* v. *County of Lake* (1963), 29 Ill. 2d 268, 272, 193 N. E. 2d 833. See also *Yarc* v. *American Hospital Supply Corp.* (1974), 17 Ill. App. 3d 667, 670. 307 N. E. 2d 749 and cases cited therein.) A bill of particulars is deemed to be a part of the complaint which it particularizes. (*Marion* v. *In Re Estate of Wegrzyn* (1968), 93 Ill. App. 2d 205, 208, 236 N. E. 2d 328.) Therefore the responses to defendants' original demand for bills of particulars, whereby the City tendered all of the original tickets for inspection, would be deemed a part of plaintiff's original complaints. The filing of the amended complaint by the City necessitated a new demand for a bill of particulars. Failure of defendants so to do constituted a waiver of their previous demand for particulars.

The computer print-outs appended as exhibits to the amended complaint became an integral part thereof for all purposes. (*Sharkey* v. *Snow* (1973), 13 Ill. App. 3d 448, 451, 300 N. E. 2d 279.) As shown, these documents set out the Illinois license number and Chicago vehicle sticker number of each car in-

volved as well as the ordinance allegedly violated and the date of each alleged violation. This should have been sufficient for defendants to present their defense concerning imposition of vicarious liability as their records would presumably indicate whether or not the particular automobile was in possession of a renter on the date in question. The only information lacking would be the place of each violation. If this additional information should become necessary, defendants could readily obtain it by examination of the original hand-on tickets. The burden should not rest entirely upon the City of laboriously, and with great expense, supplying all of the information as to the place of each alleged violation when a large part of this material might well be unnecessary. As stated in defendants' brief, much of this information goes to the factual issue as to whether a violation actually occurred.

Thus, if defendants availed themselves of access to the original tickets as tendered by the City, they would have all of the essential information. In *Village of Oak Park* v. *Flanagan*, Appellate Court of Illinois, First District, Gen. Nos. 59721, 59720, filed December 10, 1975, ... Ill. App. 3d ....., ... N. E. 2d ....., this court held a complaint for 87 separate traffic violations with computer print-outs appended as exhibits which gave date of violation, city and state license numbers and location of violation was sufficient. In the case before us, an additional bill of particulars was not required to supplement the computer print-outs and the right to production and inspection of all the original tickets. The City was, in our opinion, not required to furnish defendants with copies of the notices of violation sent to defendants. These notices could at best have been only a duplication of the information contained upon the tickets themselves. These notices were sent out by the clerk of the circuit court. There is no showing that the City had possession of copies of this information, which, if essential, should be produced by the usual legal process.

The order dismissing Count I of the amended complaint is therefore reversed and Count I remanded for additional proceedings not inconsistent with this opinion.

It remains to consider the contentions of the parties arising from the second count of the amended complaint which prayed a declaratory judgment. This court alleged that defendants were all licensed corporations in Illinois doing business in the City. The complaint then set forth ch. 27, sec. 364 of the Municipal Code of Chicago:

> "Presumptions: Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation."

The City alleged that there were approximately 11,000 parking tickets outstanding concerning automobiles owned by defendants and that it was probable that many, if not all, of these automobiles were in the possession of lessees of the defendants when the various violations occurred. The City alleged that the above portion of the Municipal Code imposed liability for parking violations on the registered owners and that proof of lack of control of the automobiles by defendants by virtue of leasing agreements could not be asserted and was not competent evidence as a defense. This second count of the amended complaint prayed declaratory relief (Ill. Rev. Stat. 1969, ch. 110, par. 57.1) establishing that under the Municipal Code of the City, the registered owner of a vehicle parked in violation of the ordinance was responsible for such violation and that under this ordinance it would not be a defense that said owner was not in possession of the vehicle at the time of violation.

Defendants filed a joint answer to the second count of the amended complaint. They admitted that they were the registered owners of all of the vehicles involved but averred that

they were engaged in the business of renting and leasing automobiles to various customers pursuant to bailment contracts and that during the term of these agreements each motor vehicle was in exclusive possession of their customer-lessee. Defendants further averred that the ordinance quoted by the City creates a presumption of liability upon registered owners of vehicles for violation of parking ordinances which may be rebutted by proof that on the date and at the time of violation the vehicle was not in the control of defendants but was in the exclusive possession and control of their customer-lessee or bailee. The answer alleged that proof that a vehicle was thus under lease at the time of the alleged violation was a complete defense on behalf of the registered owner. Defendants prayed that the court deny the City's interpretation of the ordinance and that the court declare that the presumption thereby created could be rebutted by a proper showning that, at the pertinent time, the vehicle was not in possession of the registered owner.

The trial court was provided with memoranda of law by both sides and heard argument of counsel. The court found that the second count of the amended complaint was properly brought for declaratory judgment. The court declared, as requested by defendants, that the quoted sec. 364 of the Municipal Code creates a presumption that the registered owner was in possession of the vehicle on the date and at the time of the violation; this presumption may be rebutted by a showing that at the time and date of the violation the vehicle was not in possession or under control of the owner; and that defendants are not responsible for parking violations involving vehicles registered in their names while such vehicles were in the possession of their customers-lessees.

We are in accord with the decision of the learned trial judge concerning his conclusion that the action for declaratory judg-

ment was properly brought. Although the details and provisions of rental agreements or leases are not before us, the admissions in the pleadings provide sufficient basis for a declaration of the rights of the parties under the pertinent ordinance. In this opinion we assume that defendants were the registered owners of all of the vehicles involved in all of the alleged violations and, as averred in the answer of defendants, we assume that certain of these vehicles were, at the time of the alleged violation, in the possession and under the control of rental customers. The issue here is liability of the registered owner of a motor vehicle for a parking violation of a City ordinance when possession and control of the automobile has been surrendered by the owner to a third party under a mutually permissive arrangement such as the type of bailment generally referred to as a rental or lease agreement.

This court has previously held that proof of ownership or control by the defendants is essential to the imposition of a fine for a parking violation (*City of Chicago* v. *Myers* (1968), 95 Ill. App. 2d 443, 237 N. E. 2d 866.) In the case before us, in view of the admission by defendants' motion to dismiss the first count of the amended complaint, we will proceed on the assumption that the violations all existed as set forth in the computer print-outs appended to the amended complaint and also that defendants were the registered owners of the vehicles with license numbers as set forth in these print-outs. This assumption will not preclude full opportunity to defendants, if they so desire, after they have answered the first count, to raise pertinent factual issues regarding the existence of an ordinance violation in each instance.

The ordinance provides that the registered owner "shall be prima facie responsible for such violation." The meaning of the phrase "prima facie" and its application in the law of motor

vehicles is well illustrated by the Supreme Court of Illinois in *McElroy* v. *Force* (1967), 38 Ill. 2d 528, 232 N. E. 2d 708. The Court there discussed an instruction which told the jury that if they found that a certain person was the owner of one of the automobiles, it was to be presumed that he was operating the same at the time of the collision. The Court pointed out that a presumption may be defined as an inference to be drawn by common sense from a known course of events which usually leads to the existence of a related fact. (38 Ill. 2d 528, 531.) The Court also pointed out that a presumption does not operate to shift the burden of proof but only to shift to the party against whom it operates the burden of going forward and introducing evidence with which to overcome the presumption. In the absence of such countervailing evidence, the presumption is sufficient to support a finding. 38 Ill. 528, 532, 533.

Application of the principles thus expounded in *McElroy* lead to the conclusion that this ordinance is intended to have a presumptive effect. This conclusion is supported by a number of cases. In *City of Chicago* v. *Crane* (1943), 319 Ill. App. 623, 49 N. E. 2d 802, the parties stipulated that defendant was the registered owner of a vehicle which had been unlawfully parked. Defendant put in no evidence and the court held that the presumption of liability should be applied. The court expressly pointed out (319 Ill. 623, 631):

> "It is common knowledge that many thousands of automobiles are parked in the streets at all times and it would be inconvenient and impossible for a municipality such as Chicago to keep watch over parked vehicles to ascertain who in fact operated or parked them."

The presumptive ordinance is thus a necessary aid to municipalities in enforcement of parking restrictions. In addition to *Crane*, the following authorities arrive at the same result regard-

ing presumptive operation of this type of traffic ordinance: *Commonwealth* v. *Ober* (1934), 286 Mass. 25, 189 N .E. 601; *People* v. *Kayne* (1938), 286 Mich. 571, 282 N. W. 248 and *People* v. *Bigman* (1940), 38 Cal. App. 2d (Supp.) 773, 100 P. 2d 370.

The conclusion reached in all of these cases and supported by the language of the ordinance before us does not necessarily solve the problem presented by this record. The nub of the issue before us is whether the existence of a bailment or rental agreement is sufficient to permit the imposition of a vicarious liability upon the leasing company or whether the City should be required to attempt enforcement of its ordinance against the lessee-bailee who was in possession and operation of one of defendants' automobiles at the time of the violation.

The ordinance above quoted is sec. 364 of ch. 27 of the Chicago Municipal Code. Chapter 27 contains general regulations pertaining to traffic. The problem of parking is considered in secs. 27-305 to secs. 27-332 inclusive. These sections contain numerous regulations regarding parking. Section 364 of ch. 27 as above quoted is a general section which applies to all of the remaining provisions pertaining to parking. The major problem here is not precisely a construction of sec. 364. As above shown, the words "prima facie" have a definite and well-recognized legal meaning. It is apparent that the ordinance definition in this regard is not intended to operate in a conclusive manner or to foreclose any and all defenses by the owner of a vehicle. Within the recognized definition of "prima facie" the ordinance operates only to shift the burden of producing evidence from the City to the defendant. The real problem before us then is best described as a matter of substantive law in determining whether the fact that the owner of an illegally parked vehicle has rented it to a third person for hire is competent evidence as

a defense against the imposition of vicarious liability upon the owner. Stated otherwise, the issue here is whether proof of a permissive bailment or rental agreement is legally sufficient to overcome the presumptive liability imposed upon the vehicle owner by the ordinance.

We find a division of authority in answering this question. In *Red Top Driv-Ur-Self* v. *Potts* (1957), 227 Ark. 627, 300 S. W. 2d 261, the municipality took the position that the lessor of the automobile was conclusively liable for payment of the fine. The Supreme Court of Arkansas held that such an interpretation of the ordinance would make it unconstitutional and that the offer by the rental company to furnish the municipality with the name and address of all persons who had rented their automobiles at the time of each violation was sufficient to absolve the owner-lessor of the vehicle from liability for the traffic violation. The Court listed a number of pertinent authorities bearing upon this issue. (See 227 Ark. 627, 628, 629.) We find the Arkansas case cited and followed in *People* v. *Avis Rent-A-Car Division* (1960), 206 N. Y. S. 2d 400, 24 Misc. 2d 1056, decided by the County Court of Westchester County. The court there held that a conclusive presumption would infringe upon constitutional rights and the ordinance should be construed in a constitutional manner by relieving the owner of responsibility when he has produced evidence to show that since he was bailor he had no control over commission of the traffic violation by the bailee.

In *Commonwealth* v. *Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N. E. 2d 411, an automobile was given a parking ticket. It had been rented out for hire by the defendant. The parties agreed that there had been a violation of the ordinance which provided that the registered owner shall not, "allow, permit or suffer * * *" the vehicle to violate parking regulations.

The Supreme Court of Massachusetts held that it is permissible for a legislative body to impose vicarious liability for an act where the penalty is "relatively small, and conviction does no grave damage to an offender's reputation." (354 Mass. 746, 749 citing from *Morrissette* v. *United States* (1952), 342 U. S. 246, 96 L. Ed. 288, 72 S. Ct. 240.) The Massachusetts Supreme Court also pointed out that this decision would not amount to a deprivation of property without due process of law and also, "Far from being a denial of the equal protection of the laws, a decision for the defendant would more likely create one." 354 Mass. 746, 749.

We are in accord with the result reached and with the reasons expounded by the Supreme Court of Massachusetts. We would not characterize this result as based upon a so-called conclusive presumption in interpretation of the ordinance before us. In this regard we need not consider the result reached by the Arkansas and New York cases above cited which deal with the legal results of conclusive presumption. It would not seem proper or fair to impose vicarious liability upon an owner where possession of the vehicle had been taken from him without his knowledge and against his will, as in the case of theft. However, where the registered owner of a motor vehicle voluntarily transfers possession thereof for hire, we have no hesitation in imposing a vicarious liability for traffic violations by the actual driver. It is far easier for the rental company to protect itself against the driver of the car who actually violated the ordinance than it would be for the City to try to pursue such violators. See 354 Mass. 746, 749, where the Court noted the existence of such a protective provision in the rental agreement.

Also, it is common knowledge that the renting of automobiles is a lucrative business which should not be permitted to use its own operation as a shelter for those who violate legitimate and

salutary City ordinances. It is grossly unfair that residents of a large metropolitan area who are responsible and amendable to the City for parking violations should be required to obey these ordinances, which are of crucial importance for reasons of safety and for expediting the flow of traffic, while rental companies can obtain full benefit of the City's traffic facilities for their own profit and at the same time use their business effectively to prevent uniform and fair enforcement of traffic regulations.

The result reached by the trial court as regards the second count of the amended complaint is reversed and the cause remanded for further proceedings predicated upon the legal theory that the ordinance here in question is presumptive in its operation but that rental agreements or bailments to third parties entered into by defendants in the usual course of their business do not constitute a defense to the claim of the City against the defendants themselves as registered owners for traffic violations committed by operators of the rented vehicles.

Accordingly the order appealed from is reversed and the cause remanded with directions regarding trial of Count I and disposition of Count II as above set forth.

REVERSED AND REMANDED WITH DIRECTIONS.

BURKE, *J.*, concurs.

SIMON, *J.*, specially concurs in part and dissents in part.

MR. JUSTICE SIMON specially concurring in part and dissenting in part:

I disagree with the conclusion that the defendants waived their demand for a bill of particulars by failing to renew it after the amended complaint was filed. Since Count I of the amended complaint was identical with the original complaint, filing a new demand for a bill of particulars would have been

only a needless duplication. In *Marion* v. *In re Estate of Wegrzyn* (1968), 93 Ill. App. 2d 205, 236 N. E. 2d 328, the only case cited by the majority which deals with a bill of particulars in instances where an amended complaint had been filed, the amendment differed substantially from the original complaint. In the interest of simplifying litigation and reducing the volume of court records and paper work the judicial process requires, the demand for a bill of particulars directed to the original complaint should in this case be applicable to the amended complaint even though the demand was not formally repeated by an additional document.

I concur with the majority that the city responded sufficiently to the demand for the bill of particulars by advising the defendants that the original hang-on tickets would be made available for their inspection. This procedure, similar to the one provided for producing documents containing information sought by interrogatories (Supreme Court Rule 213(d)), is more expedient than burdening the court records with written responses setting forth the particulars of the time and location of each of more than 11,000 parking violations. Based on the assumption that the city will make the hang-on tickets available for inspection in a form legible enough so that the defendants can compile from them the information with respect to each violation sought by the request for the bill of particulars, I agree that reversal of the dismissal order as to Count I is appropriate.

So far as Count II of the complaint is concerned, I would affirm the circuit court. I see no constitutional defects in the ordinance as interpreted by the city. I simply do not agree that Section 364 of the Chicago Traffic Regulations or the numerous ordinances regarding parking found in Chapter 27 of the Chicago Municipal Code are fairly susceptible to the interpretation given it by the city and ratified by the majority opinion.

As the majority points out, section 364 applies to other sections of the Chicago Municipal Code which relate to parking. Section 364 makes the owner presumptively liable for a parking violation in some instances even where the other sections as worded do not. Three examples taken from Chapter 27 illustrate this point. Section 308(a) provides:

> "When signs have been erected upon any street indicating that * * * parking is prohibited during designated hours * * * no person shall park any vehicle on said street in violation of any such signs."

That ordinance applies to a person who parks a vehicle, not to the owner unless the owner is such a person. Section 311(a)(13) provides:

> "It shall be unlawful for the operator of any vehicle to * * * park such vehicle in * * * the following places * * * : At any place where official traffic signs have been erected prohibiting * * * parking."

This ordinance on its face is a prohibition directed to the operator rather than the owner unless the owner is also operating the vehicle. Similarly, Section 329 applies to the owner only if he is the operator. It provides:

> "It shall be unlawful for the operator of any motor vehicle * * * to park such vehicle in such parking meter zone for a period of time longer than is designated on the meter for the value of the coin * * * deposited in such meter."

For a person who may not fit the description of the offender as set forth in these three ordinances to be made presumptively liable by Section 364, and then precluded from rebutting the presumption because the person who actually parked or operated the vehicle was his lessee or bailee is neither logical nor reasonable. This is particularly true where the only basis for reaching this result is a rule labeled by the majority as one of substantive law, but gleaned by the majority from the applica-

tion of traffic regulations of the city of Boston which contained no provision making the owner only "prima facie responsible" and in many respects differed from the Chicago ordinances.[1] A rule of substantive law is suspect if its effect is to transform a presumption which the ordinance in question clearly provides is rebuttable into an irrebuttable one in situations where the owner's bailee or lessee rather than the owner was the offender, not the owner. If the city of Chicago intends to preclude the owner from rebutting the presumption raised by its ordinance by showing the owner's lessee or bailee was responsible for the illegal parking, the ordinance should be amended to state that. Instead, the majority has masked its distortion of the ordinance by using the label of "a matter of substantive law" to rewrite the traffic ordinances set forth above, and others as well, by concluding that the owner has no defense and is guilty where his lessee or bailee is the person who operates the vehicle or parks it.

I agree that (i) illegal parking of cars on city streets is a public mischief; (ii) as a matter of public policy and traffic administration the city authorities should not be required to keep watch over parked vehicles to find out who parked them; (iii) the car rental companies can protect themselves against illegal parking of their cars by their customers, and they should not be permitted to escape responsibility for their cars illegally parked on city streets and at the city airport. I applaud the result the majority strives to reach, but it should be accomplished by an amendment of the ordinance instead of by an interpretation carving an irrebuttable presumption under some circumstances out of an ordinance which on its face provides only for

1. *Commonwealth* v. *Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N. E. 2d 411 and *Commonwealth* v. *Ober* (1934), 286 Mass. 25, 189 N. E. 601, on which the majority relies, dealt with rules and regulations of the Boston Traffic Commission.

"prima facie responsibility" in all circumstances. I would, therefore, affirm the circuit court's construction of the ordinance in response to Count II of the complaint. In the interest of freeing the street of illegally-parked cars owned by the defendants, I would urge the City Council of Chicago to amend the city traffic regulations so that they provide the owner is responsible for illegal parking of a vehicle which is in the possession of his bailees, lessees or customers.

APPENDIX D

CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

ORDER

This cause coming on the pleadings in Count II of this cause, all parties having been represented by counsel and the Court having examined the pleadings herein and having heard arguments of counsel and being fully advised in the premises, the Court hereby finds that:

1. Count II is a complaint for a declaratory judgment praying for an interpretation of Chapter 27 § 364 of the Municipal Code of the City of Chicago.

2. The Court finds that Count II is a case of actual controversy and is properly brought under Section 57.1 of the Civil Practice Act (Ill. Rev. Stat. 1971, ch. 110, par. 57.1).

3. That judgment be and the same is hereby entered pursuant to Section 57.1 of the Civil Practice Act of the State of Illinois construing Chapter 27, Section 364 of the Municipal Code of the City of Chicago and making binding declarations of rights of the parties hereto as follows:

(a) Chapter 27, Section 364 of the Municipal Code of the City of Chicago creates the presumption that the registered owner of a vehicle parked in violation of a traffic ordinance of the City of Chicago was in possession of the said vehicle on the date and at the time of such violation.

(b) The presumption created by said Section 364 is rebuttable and may be rebutted by a showing by the registered owner that at the time and date of the violation, the vehicle was in fact not in the possession or under the control of the registered owner.

(c) Pursuant to Chapter 27, Section 364 of the Municipal Code of the City of Chicago, the defendants are not responsible for parking ordinance violations involving vehicles registered in their name, while such vehicles were in the possession of customers-lessees of the defendants.

Enter:

/s/ NATHAN J. KAPLAN
Judge

CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

OPINION

This matter comes before the Court on the complaints filed by the City of Chicago in cause #67 MC 102415, City of Chicago v. Hertz Commercial Leasing Corp., 67 MC 102416, City of Chicago v. Avis Rent-a-Car Systems, Inc., and 67 MC 102417, City of Chicago v. Chrysler Leasing Corporation and 68 MC 50305, City of Chicago v. Hertz Commercial Leasing Corp., all three complaints having been consolidated into Cause 68 MC 50305 since the matters in issue arise out of the same ordinances and the decision of the Court will be applicable to all of the complaints filed under the above enumerated cause. Since the filing of the original complaints, numerous meetings have been held between the counsel for the defendants, the Corporation Counsel and the Court, all designed to attempt to expedite the facts and issues so that they can be presented to the Appellate Court for review.

On November 15, 1971, the City filed amended complaints in each of the three cases which have been consolidated into 68 MC 50305.

This Amended Complaint consisted of two counts. In Count I the City, complaining of the defendants set forth that each of the defendants was in the business of leasing automobiles and were duly licensed corporations operating in the State of Illinois. That in the original complaint there had been filed Exhibit A, a computer punch out form, which by virtue of the information contained in the original and amended complaints apprised the defendants of the license plate and City of Chicago license emblem numbers of the vehicles which were parked illegally, the date upon which the alleged violations took place and the section of the Municipal Code under which these violations presumably fell.

For the sake of the record, it is sufficient simply to state that various pleadings were filed by the defendants relating to the issue of discovery, in which defendants set forth that they would be unable to answer to the allegations in Count I without knowing where and at what time the alleged violations took place. From time to time the Court indicated to the plaintiff that it would grant the request of the defendants for this information and indicated to the plaintiff that whatever time would be necessary for the plaintiff to furnish this information would be allowed.

In the interim and throughout the various conferences which were held, the plaintiff has maintained its position that the information already furnished by plaintiff in its Exhibit A is sufficient to establish a prima facie case under the ordinance which is currently in effect in the City of Chicago, Chapter 27, Section 364 of the Municipal Code which states as follows:

> "Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be

prima facie responsible for such violation and subject to the penalty therefor."

On March 11th, at a hearing held before this Court on the defendant's motion to dismiss the amended complaint and upon defendant's answer to Count II of plaintiff's complaint, the City, by its counsel indicated that they would stand upon their amended complaint and proceed without furnishing the information requested by defendants, which the Court had indicated to the plaintiff would be a requirement before proceeding with the trial of the issue.

The Court is of the opinion that the City Ordinance upon which the City has proceeded is a presumptive ordinance, that in order for the City to make out a prima facie case, it is necessary for the City to furnish the information requested so that defendants are able to defend themselves in this type of a proceeding.

The City in reply has cited several cases under which it seeks to establish its position that it does not require any further information than that which has been already furnished for a finding against the defendant and in line with that they quote *City of Chicago v. Crane*, 319 Ill. App. 623 and *Commonwealth v. Ober*, 286 Mass. 25 and also the ordinance of the City of Chicago before and after these decisions. In *City of Chicago v. Crane* it was stipulated that the defendant was a registered owner of a certain automobile which had been parked five feet away from a fire hydrant, in violation of a City Ordinance prohibiting parking within fifteen feet of a fire hydrant. The defendant elected not to put in any evidence. In reversing the trial court, the Court stated:

"(2) Section 27-19 makes it unlawful for the operator of a vehicle to park it at any curb within 15 feet of a fire hydrant," while Sec. 27-34.1 provides that when any vehicle shall have been

parked in violation of 27-19(7) 'the person in whose name such vehicle is registered shall be subject to the penalty for such violation.' *We are of the opinion* that under the stipulated facts, defendant violated the ordinance and was liable, and the court erred in discharging him."

"In *Commonwealth v. Ober*, 286 Mass. 25, 189 N.E. 601, defendant was charged with parking or allowing to be parked, an automobile registered in her name, contrary to the regulation adopted by the Boston Traffic Commission. She was found guilty on each of the two counts and sentenced to pay a fine of $5 on each count. The police officer who saw the parked car, attached a tag to it on which appeared the registration number of the automobile, the day, time and place when and where the car was parked and tagged and also a printed statement that the automobile had been tagged for a violation of traffic regulations, that is, parking in a restricted space, and requested her to bring the tag to the police station within 48 hours. Notice of the tagging was sent by the traffic bureau of police to defendant at her address. The tags were never returned, and nothing was heard from defendant. The Court said: "There was no evidence as to who left or parked the defendant's automobile at the times and places set forth in the complaints or who took it away. At the close of the evidence defendant requested the court 'to instruct himself' that (3) The burden is upon the Commonwealth to prove that the defendant parked her car in the premises alleged in the complaint; * * * (7) The court should rule as a matter of law that ownership of a motor vehicle is no evidence that the said motor vehicle was parked illegally by the defendant. The court refused these and other requests. The court in refusing request numbered 7, in its opinion said: 'he (the trial judge) had in mind that the rules alleged to have been violated do not in terms require that the parking shall be done by the defendant."

"And continuing: There are many modern instances of acts which are made criminal by legisla-

tion where there is no intent or criminal knowledge by the offender. These offenses are commonly described as mala prohibita as distinguished from offenses which are mala in se. * * *"

"The legislation here under consideration belongs to the class of statutes where the General Court, legislating for the common welfare, has put the burden upon the individual of ascertaining at his peril whether his conduct is within the scope of the criminal prohibition. The moral turpitude, the motive which prompts the illegal act, and the knowledge or ignorance of its criminal character are immaterial on the question of guilt. And the court there further said:

"In the instant cases the public mischief to be averted is obvious. The inconvenience of keeping watch over parked vehicles to ascertain who in fact operates them would be impracticable, if not impossible, at a time when many vehicles are parked. *We think the rules and regulations of the Boston Traffic Commission * * * were framed and intended to cover and make punishable any violation of secs. 31(5), 19 and 17(4) by the owner of a registered vehicle, whether the particular violation or violations were by the owner or were by a person allowed, permitted or suffered by the owner of any vehicle registered in his name* in any street, way, highway, road or parkway under the control of the city of Boston. In a word this case is one of the unusual instances where a person at his peril must see to it that the rules and regulations are not violated by his act or by the act of another. *The reported evidence established a prima facie case which was not met by evidence offered by the defendant*" (Emphasis added.)

In both of these instances the issue was whether or not the City had made out a prima facie case and because of the posture taken by the defendants in these cases the Court held that a prima facie case had been made out.

It is the contention here of the defendants that they find no fault with the statute as such, but that in order to properly answer the charges levied against them which encompasses approximately 11,000 plus tickets and since the inception of these lawsuits, considerably more.

In order to ascertain who was in actual operation of the automobile they would have to know where the violation was committed and at what time. The Court believes that this is a proper request and that the City must furnish this information to a defendant so that if a defendant does have a proper defense which can be asserted, it should have the opportunity to do so.

Since the City elected to stand upon its position that the information furnished under these computer punch outs is sufficient to meet the requirements of a prima facie case, the Court has no alternative but to strike Count I of the complaint for failure to sufficiently set out a cause of action as required under the rules of our Court.

With respect to Count II which is a complaint for a declaratory judgment praying for an interpretation of Chapter 27, paragraph 364 of the Municipal Code of the City of Chicago, the Court feels that Count II is a case of actual controversy and is properly pleaded under Section 57.1 of the Civil Practice Act, Illinois Revised Statutes (1971), Ch. 110, sec. 57.1 and accordingly states that judgment be and the same is hereby entered pursuant to section 57.1 of the Civil Practice Act of the State of Illinois constituting Chapter 27, section 364 of the Municipal Code of the City of Chicago in making binding declarations of the rights of the parties hereto as follows:

a) Chapter 27, section 364 of the Municipal Code of the City of Chicago creates the presumption that the registered owner of a vehicle parked in violation of a traffic ordinance of the City of Chicago was in possession of the said vehicle on the date and at the time and place of such violation.

b) That the presumption created by Section 364 is rebuttable and may be rebutted by a showing by the registered owner that at the time and place and the date of the violation, the vehicle was in fact not in possession of the registered owner.

c) Pursuant to Chapter 27, section 364 of the Municipal Code of the City of Chicago, the defendants are not responsible for parking ordinance violations involving vehicles registered in their name while such vehicles were in the possession and under the control of customer-lessees of the defendants.